

**IMPLEMENTING REGULATION
ON TRUSTS
AND SUPERVISION OF FINANCIAL TRUSTEES**
year 2011 / number 06

PART I
INTRODUCTION

Article 1 - Definitions

1. For the purpose of this Regulation, the expressions used herein have the following meaning:
 1. **"Central Bank"**: the Central Bank of the Republic of San Marino regulated by Law No. 96 of 29 June 2005 as subsequently amended and supplemented;
 2. **"Trustee Decree"**: Delegated Decree No. 49 of 16 March 2010;
 3. **"Trust Act"**: Law No. 42 dated 1 March 2010;
 4. **"Lisf"**: Law No. 165 of 17 November 2005 as subsequently amended and supplemented;
 5. **"Non cooperative Countries or Territories"**: the countries, jurisdictions or territories for which the GAFI/FATF or other FATF-Style Regional Body (including the Council of Europe's Moneyval Committee) release *public statements* or other measures (the so-called "Countries, jurisdictions or territories subject to strict monitoring" referred to in Instruction No. 2009-08 of the Financial Intelligence Agency);
 6. **"Person responsible for the office of trustee"**: a person appointed within a company to hold the office of trustee and vested with the powers, including that of signature, relating to said office;
 7. **"Financial Trustee"**: trustee who falls within the definition of "financial undertaking" referred to in article 1, paragraph 1 of Law No. 47 dated 23 February 2006, as subsequently amended and supplemented.
 8. **"Professional Financial Trustee"**: financial trustee registered in the register of authorised trustees referred to in article 2, paragraph 7 of the Delegated Decree No. 49 of 16 March 2010.

2. In this document, the use of the terms included in the definitions is highlighted by SMALL CAPS CHARACTERS.

3. For all terms not defined in paragraph 1, reference should be made to the definitions provided for in the TRUST ACT and in the LISF.

Article 2 - Sources of law

1. This Regulation implements all references to measures of the Supervisory Authority contained in the TRUST ACT listed below:
 - article 28 paragraph 5, regarding the presentation of the Book of Events of the Supervisory Authority;
 - article 33 paragraph 3, regarding the identification of countries, in which the banks or investment companies may not be delegated the selection of investments by the trustee.

Article 3 - Purposes

1. The purpose of this Regulation is to merge all the secondary governance interventions delegated to the CENTRAL BANK by the TRUST ACT into a single provision, in this way, with the Implementing Regulation on the TRUSTEE DECREE, integrating all the regulations delegated on the subject of trusts.

Article 4 - Recipients

1. Part II of this Regulation refers

- under Title I: to all persons that exercise the office of trustee pursuant to the TRUST ACT;
- under Title II: to all authorised parties in terms of LISF -and consequently subject to the supervision of the CENTRAL BANK - exercising the office of trustee pursuant to the TRUST ACT;
- under Title III: to all authorised parties in terms of LISF - and consequently subject to the supervision of the CENTRAL BANK - exercising the office of trustee, even though they may fall below the threshold required to exercise said office in a professional capacity or in applying governing laws other than those of San Marino.

PART II PROVISIONS

Title I

Trustees' delegation powers

Article 5 – Identification of countries pursuant to Art.33 paragraph 3 of the TRUST ACT

1. In implementing the provisions under Article 33 paragraph 3 of the TRUST ACT, the trustee may not delegate the selection of investments to banks or investment companies established or administered in NON COOPERATIVE COUNTRIES OR TERRITORIES.

Article 6 – Intervening loss of the condition

1. In the event of the Country becoming included in the list of NON COOPERATIVE COUNTRIES OR TERRITORIES at a time subsequent to the proxy being conferred, the trustee must promptly revoke the delegation of powers.
2. For the purposes stated above, on conferring the proxy, the trustee is obliged to include a specific notification requirement in respect of the delegated bank or investment company.

Title II

Presentation of the Book of Events

Article 7 – Presentation of the Book Events to the CENTRAL BANK

1. Given that FINANCIAL TRUSTEES are parties supervised by the CENTRAL BANK, they are obliged to present the Book of Events in respect of the trusts administered, not only when so requested by the guardian, the Judicial Authorities and Central Liaison Office, but also when requested by the CENTRAL BANK that shall assume the information contained therein for the purposes of supervising the trustee.

Article 8 – Presentation procedures

1. The Book of Events may be presented to the CENTRAL BANK as an "off-site intervention" or as an "inspection" procedure.

2. In the event of the "off-site intervention" procedure, the FINANCIAL TRUSTEE must send the CENTRAL BANK, based on the request sent by registered letter with acknowledgement of receipt, an authenticated and complete copy of the Book of Events for each of the trusts administered or only in respect of the one/the ones/those indicated by name in the request, within and no later than 5 business days from the receipt of the registered letter; in the case of the FINANCIAL TRUSTEE being a PROFESSIONAL FINANCIAL TRUSTEE, the copies sent must be authenticated by a Public Notary of San Marino in addition to being signed by the PERSON RESPONSIBLE FOR THE OFFICE OF TRUSTEE.

3. In the event of the "inspection" procedure, the FINANCIAL TRUSTEE must promptly deliver the requested Book of Events to the inspection unit of the CENTRAL BANK that is conducting the inspections: the PROFESSIONAL FINANCIAL TRUSTEES must similarly make every effort so that the HEAD OF THE OFFICE OF TRUSTEE provides the inspection unit with the cooperation needed for the information to be correctly and completely acquired.

Article 9 – Storage procedures

1. For the purposes stated in the Article above, FINANCIAL TRUSTEES must always store the Book of Events for each trust at their registered office or administrative headquarters, even in cases where the HEAD OF THE TRUSTEE OFFICE is domiciled elsewhere.

Title III

Provisions on the information supervision of financial trustees

Article 10 – Provisions on the information supervision of FINANCIAL TRUSTEES

1. Even if FINANCIAL TRUSTEES do not fall into the category of PROFESSIONAL FINANCIAL TRUSTEES because they exercise the office of trustee for not more than one trust, they must send the CENTRAL BANK, with reference to each calendar quarter and no later than the end of the next month, a report containing:
 - a) the aggregate data relating to their exercising of the office of trustee, for each calendar quarter;
 - b) an Analytical Inventory of Assets (in short, AIA) for each trust administered, corresponding only to the quarterly report at 31 December.

Article 11 – Content of the Analytical Inventory of Assets

1. The AIA must provide a detailed analysis of the extent of assets at 31 December of the previous year for each fund in the trust.

Article 12 – Reporting Scheme

1. For the purposes stated above, the FINANCIAL TRUSTEES must complete the reporting scheme in the updated version, published in the reserved area of the CENTRAL BANK'S internet site

Article 13 – Operating Manual

1. The reserved area of the CENTRAL BANK'S internet site also publishes the manual containing the operating details for entering data into the scheme referred to in the previous article, as well as the technical procedures for submitting the report itself.

Title IV

Final and Transitional Rules

Article 14 – Abrogations

1. Pursuant to the provisions in the Title above, article III.II.1 paragraph 2 of Regulation No. 2010-01 is simplified as follows:

"2. Together with the documents referred to in the preceding paragraph, the PROFESSIONAL TRUSTEE shall transmit to the CENTRAL BANK a copy of the document attesting the participation in the refresher training course during the preceding calendar year, which is referred to in Article IV.I.3, paragraph 5 below."

Article 15 – Entry into force

1. This Regulation shall enter into force on 30 December 2011.

2. With regard to the quarterly reporting, accompanied by the AIA, referring to 31 December 2011, the deadline for sending this through to the CENTRAL BANK has been extended to 31 March 2012.